



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/675,790 | 09/29/2000 | Donald F. Ferguson | P24324 USA | 8873 |

7590 01/25/2005
Gregory S Bernabeo Esquire
Synnestvedt & Lechner LLP
2600 Aramark Tower
1101 Market Street
Philadelphia, PA 19107-2950

EXAMINER

JACOBS, LASHONDA T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2157

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/675,790

Applicant(s)

FERGUSON ET AL.

Examiner

LaShonda T Jacobs

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2157

DETAILED ACTION

Response to Amendment

This Office Action is in response to Applicants' Amendment and Request for Reconsideration filed on September 21, 2004. Claims 1-14 and 17-20 are presented for further examination.

Newly added claims 21-22 are also presented for examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8, 13-14 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Jiang et al et al (hereinafter, "Jiang", 6,453,354).

As per claim 1, Jiang teaches a method for upgrading at least one of a plurality of computer programs stored on a server computer in a distributed computing environment, said method comprising:

- preventing said server computer from servicing requests for an upgrade-ready computer program while permitting said server computer to service client requests for other computer programs during upgrading of said upgrade-ready computer program on said server computer (abstract, col. 8, lines 60-67, col. 9, lines 1-15, col. 10, lines 8-20, col.

29, lines 66-67 and col. 30, lines 1-25, Jiang teaches a file server system that allows an owner of a file to lock and unlock metadata from clients during a read/write process (upgrading file/metadata) until the process is complete. Once the process is complete the client can access the file/metadata. Therefore, Jiang implicitly teach preventing said application server from servicing requests for an upgrade-ready computer program while permitting said application server to service client requests for other computer programs.).

As per claim 2, Jiang further teaches:

- (a) preventing said server computer from receiving any new requests for said computer program (abstract, col. 8, lines 60-67, col. 9, lines 1-15, col. 10, lines 8-20, col. 29, lines 66-67 and col. 30, lines 1-25);
- (b) waiting until all of said server computer current requests for said computer have ended (col. 13, lines 42-62);
- (c) acknowledging completion of upgrading said computer program (col. 30, lines 1-25);
- and
- (d) permitting said server computer to receive any new requests for said computer program (col. 8, lines 60-67 and col. 9, lines 1-15).

As per claim 3, Jiang teaches:

- (e) sending a signal to a router to instruct said router to stop routing requests for said computer program to said server computer (col. 7, lines 51-67, col. 8, lines 1-15 and col. 10, lines 7-20).

As per claim 7, Jiang teaches wherein step (d) comprises the step of:

Art Unit: 2157

(f) sending a signal to a router to instruct said router to begin routing requests for said computer program to said server computer (col. 7, lines 51-67, col. 8, lines 1-15 and col. 10, lines 7-20).

As per claims 4 and 8, Jiang teaches:

- an identification code identifying said computer program (col. 13, lines 42-62 and col. 21, lines 23-39).

As per claim 5, Jiang teaches:

- a universal resource locator (col. 21, lines 23-39).

As per claim 6, Jiang teaches:

- a filename (col. 21, lines 23-39).

As per claim 9, Jiang teaches:

(g) maintaining a server list, said server list identifying a computer program and a server computer for satisfying a request for said computer program (col. 13, lines 42-62).

As per claim 10, Jiang teaches wherein said signal in step (f) comprises:

- an identification code read from said server list (col. 13, lines 42-62 and col. 21, lines 23-39).

As per claim 11, Jiang teaches the step of:

(i) maintaining a session list of active client requests serviced by said server computer, said session list identifying a client request and computer program requested by said client (col. 13, lines 42-62 and col. 21, lines 23-39).

As per claim 12, Jiang teaches wherein step (b) comprises the step of:

(j) referencing said session list (col. 13, lines 42-62).

Art Unit: 2157

As per claim 13, Jiang further teaches the step of:

(k) repeating steps (a) through (d) for a next server computer storing said computer program (abstract, col. 8, lines 60-67, col. 9, lines 1-15, col. 10, lines 8-20, col. 13, lines 42-62, col. 29, lines 66-67 and col. 30, lines 1-25).

As per claim 14, Jiang teaches wherein step (c) comprises the step of:

(l) receiving a signal from an server computer upon completion of upgrading of said computer program at said server computer (col. 30, lines 1-25).

As per claim 17, Jiang teaches a method for upgrading one of a plurality of computer programs stored on a server computer in a distributed computing environment, said method comprising the steps of:

- (a) instructing a router to stop routing requests for said computer program to said server computer while permitting said router to continue routing requests for other computer programs to said server (col. 7, lines 51-67, col. 8, lines 1-15 and col. 10, lines 7-20);
- (b) waiting until said application server is no longer supporting a current client request for said computer program (col. 13, lines 42-62);
- (c) after completion of upgrading of said computer program, instructing said router to begin routing requests for said computer program to said server computer (col. 7, lines 51-67, col. 8, lines 1-15, col. 10, lines 7-20 and col. 30, lines 1-25).

As per claims 18 and 20, Jiang teaches wherein step (a) comprises:

- sending a signal to said router identifying said computer program and said server computer (col. 7, lines 51-67, col. 8, lines 1-15 and col. 10, lines 7-20).

As per claim 19, Jiang teaches disclose wherein step (b) comprises:

Art Unit: 2157

- receiving a signal from said server computer, said server computer maintaining a list of active client requests, said list identifying said computer program, said server computer sending said signal when said list reflects no active client requests for said computer program (col. 13, lines 42-62 and col. 21, lines 23-39).

As per claim **21**, Jiang teaches wherein step (a) comprises:

(e) sending a signal to router to instruct said router to stop routing requests for said computer program to said server computer while permitting said router to continue routing requests for other computer programs to said server computer (col. 7, lines 51-67, col. 8, lines 1-15, col. 8, lines 60-67, col. 9, lines 1-15 and col. 10, lines 7-20).

As per claim **22**, Jiang teaches:

- preventing said server computer from servicing requests for said upgrade-ready computer program comprises sending a signal to a router to instruct said router to stop routing requests for said computer program to said server computer while permitting said router to continue routing requests for other computer programs to said server computer (abstract, col. 8, lines 60-67, col. 9, lines 1-15, col. 10, lines 8-20, col. 29, lines 66-67 and col. 30, lines 1-25).

Response to Arguments

5. Applicant's arguments with respect to claims 1-14 and 17-22 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2157

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,816,891 to Vahalia et al

U.S. Pat. No. 6,571,259 to Zheng et al

U.S. Pat. No. 6,330,560 to Harrison et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T Jacobs whose telephone number is 571-272-4004.

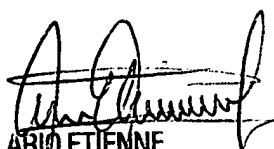
The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
January 14, 2005


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100